

TESTIMONY OF GEORGE W. TENLEY, JR., ACTING CHIEF COUNSEL,
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UNITED STATES DEPARTMENT OF TRANSPORTATION
BEFORE THE HOUSE COMMITTEE ON
MERCHANT MARINE AND FISHERIES,
SUBCOMMITTEE ON OCEANOGRAPHY
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THANK YOU, MADAM CHAIRWOMAN, FOR THE OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TODAY TO DISCUSS THE PROGRAMS ADMINISTERED BY THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, AS THEY RELATE TO THE INCINERATION OF HAZARDOUS WASTES AT SEA. AT THE OUTSET, I WOULD LIKE TO NOTE THAT OUR ROLE IN THIS SPECIFIC CONTEXT IS LIMITED TO ASSURING THE SAFETY OF THE GROUND TRANSPORTATION OF HAZARDOUS WASTE FROM THE GENERATOR FACILITY TO THE PORT. WE HAVE BEEN ASKED TO PROVIDE A BRIEF DESCRIPTION OF OUR REGULATORY FRAMEWORK.

IN CONJUNCTION WITH OUR SISTER AGENCIES IN THE DEPARTMENT OF TRANSPORTATION AND THE ENVIRONMENTAL PROTECTION AGENCY, UNDER ITS PROGRAMS IN FURTHERANCE OF THE RESOURCE CONSERVATION AND RECOVERY ACT AND OTHER ENVIRONMENTAL STATUTES, WE ADMINISTER A SOUND REGULATORY AND ENFORCEMENT FRAMEWORK INTENDED TO PROTECT THE PUBLIC HEALTH AND SAFETY DURING ALL PHASES OF WASTE TRANSPORTATION.

THE TRANSPORTATION OF HAZARDOUS MATERIALS, OF WHICH HAZARDOUS WASTES FORM A SUBGROUP, IS REGULATED BY THE DEPARTMENT OF TRANSPORTATION (DOT) UNDER THE AUTHORITY OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT (HMTA), WHICH WAS ENACTED IN JANUARY 1975. THIS ACT EMPOWERS THE SECRETARY OF TRANSPORTATION TO PROMULGATE

AND ENFORCE SAFETY REGULATIONS PERTAINING TO THE TRANSPORTATION OF HAZARDOUS MATERIALS. THE SECRETARY HAS, IN TURN, DELEGATED HER AUTHORITY TO VARIOUS OPERATING ADMINISTRATIONS WITHIN DOT. THESE OPERATING ADMINISTRATIONS INCLUDE THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA), THE U. S. COAST GUARD (USCG), THE FEDERAL AVIATION ADMINISTRATION (FAA), THE FEDERAL RAILROAD ADMINISTRATION (FRA), AND THE FEDERAL HIGHWAY ADMINISTRATION (FHWA).

EXCEPT FOR BULK TRANSPORTATION BY WATER, WHICH IS THE RESPONSIBILITY OF THE COAST GUARD, THE ROLE OF PROMULGATING REGULATIONS FOR HAZARDOUS MATERIALS FOR ALL TRANSPORTATION MODES RESTS IN RSPA. ENFORCEMENT OF THE REGULATIONS, ON THE OTHER HAND, IS DELEGATED SEVERALLY TO THE OPERATING ADMINISTRATIONS THAT I HAVE JUST NAMED. THIS DIVISION OF ENFORCEMENT AUTHORITY MAKES USE OF THE FEDERAL INSPECTION AND ENFORCEMENT RESOURCES ALREADY DEPLOYED BY THOSE ADMINISTRATIONS IN THE ENFORCEMENT OF THEIR OWN MODAL REGULATIONS. FOR EXAMPLE, THE FEDERAL HIGHWAY ADMINISTRATION'S BUREAU OF MOTOR CARRIER SAFETY (BMCS) INSPECTORS WHO INSPECT FOR MOTOR VEHICLE SAFETY COMPLIANCE, DRIVER HOURS OF SERVICE, AND OTHER GENERAL ASPECTS OF TRUCK SAFETY, ALSO INSPECT FOR HAZARDOUS MATERIALS COMPLIANCE. RSPA AUGMENTS THESE INSPECTION FORCES BY CONCENTRATING ITS ENFORCEMENT EFFORTS ON CONTAINER MANUFACTURERS AND MULTIMODAL SHIPMENTS.

IN THE EARLY YEARS OF HAZARDOUS MATERIALS TRANSPORTATION SAFETY REGULATION, PUBLIC CONCERN--AS EXPRESSED THROUGH ENACTMENT OF LAWS--WAS FOCUSED PRINCIPALLY ON HAZARDS SUCH AS EXPLOSION, FIRE,

AND POISONING. THIS CONCERN HAS BEEN BROADENED TO INCLUDE HAZARDS FROM RADIATION AND INFECTIOUS SUBSTANCES AND, MORE RECENTLY, THE CHRONIC RISKS PRESENTED BY CARCINOGENS AND POLLUTANTS, INCLUDING HAZARDOUS WASTES. THIS JOINING OF THE TRADITIONAL CONCERN FOR THE SAFETY OF LIFE AND PROPERTY WITH CONCERNS FOR HEALTH AND ENVIRONMENT HAS LED TO CHANGES IN THE BODY OF REGULATIONS GOVERNING TRANSPORTATION SAFETY.

I WILL NOW TURN TO A DISCUSSION OF HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS AS THEY RELATE TO THE CONTROL OF HAZARDOUS WASTES.

DOT'S HAZARDOUS MATERIALS REGULATIONS (HMR) ARE ISSUED UNDER THE AUTHORITY OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT AND ARE FOUND IN THE CODE OF FEDERAL REGULATIONS AT TITLE 49, PARTS 171-179. GENERALLY SPEAKING, A HAZARDOUS WASTE IS REGULATED IN THE SAME MANNER AS THE MATERIAL WOULD BE REGULATED IN ITS NON-WASTE STATE. OUR REGULATIONS ADDRESS THREE BASIC AREAS OF CONCERN: THE COMMUNICATION OF HAZARDS, PACKAGING, AND THE OPERATION OF VEHICLES, VESSELS AND AIRCRAFT.

COMMUNICATION REQUIREMENTS INCLUDE SHIPPING PAPERS, PACKAGE MARKING, PACKAGE LABELING, AND THE PLACARDING OF VEHICLES. SPECIFIC SHIPMENT REQUIREMENTS FOR COMMUNICATION PURPOSES DEPEND ON A NUMBER OF RELEVANT FACTORS INCLUDING THE RISK TO THE PUBLIC, BULK SHIPMENT VS. MIXED SHIPMENTS, AND THE SIZE OF THE CONTAINER USED. ALL HAZARDOUS WASTE SHIPMENTS MUST CARRY A SHIPPING PAPER

CALLED A UNIFORM HAZARDOUS WASTE MANIFEST. THIS DOCUMENT, DEVELOPED COOPERATIVELY BY DOT AND EPA, REQUIRES ADDITIONAL INFORMATION APPROPRIATE TO THE SHIPMENT OF WASTES, IN BOTH INTER-STATE AND INTRASTATE COMMERCE.

DOT PACKAGING REQUIREMENTS COVER AN ARRAY OF PACKAGINGS FROM SMALL BOTTLES TO RAILROAD TANK CARS, INCLUDING SUCH ITEMS AS BOXES, DRUMS, GAS CYLINDERS, PORTABLE TANKS, CARGO TANKS (TANK TRUCKS) AND RAIL TANK CARS. THE STRINGENCY OF THE PACKAGING REQUIREMENT FOR A HAZARDOUS WASTE DEPENDS ON THE DEGREE OF HAZARD THAT THE WASTE POSES DURING THE TRANSPORTATION PHASE.

WE WORK CLOSELY WITH AGENCIES WHICH HAVE A ROLE IN THE TRANSPORT OF HAZARDOUS WASTES. IN ADDITION TO OUR JOINTLY DEVELOPED HAZARDOUS WASTE MANIFEST, DOT AND EPA HAVE EXECUTED A MEMORANDUM OF UNDERSTANDING IN THE AREA OF ENFORCEMENT. ALSO, OUR TECHNICAL STAFF HAS PROVIDED SUPPORT AND COOPERATION IN EPA'S RISK ASSESSMENTS OF THE LAND TRANSPORTATION OF HAZARDOUS WASTES.

WITHIN DOT ITSELF, THE REGULATORY PROGRAMS AND FUNCTIONS OF THE VARIOUS OPERATING ADMINISTRATIONS ARE COORDINATED BY BOTH FORMAL AND INFORMAL MEANS. FOR EXAMPLE, THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS, WHICH ARE ADMINISTERED BY THE FEDERAL HIGHWAY ADMINISTRATION, ARE FORMALLY INCORPORATED BY REFERENCE INTO THE HAZARDOUS MATERIALS REGULATIONS. WE HOLD REGULAR "INTER-MODAL" MEETINGS TO ADDRESS REGULATORY ISSUES WHICH AFFECT THE OPERATIONS OF THE VARIOUS MODAL ADMINISTRATIONS WITHIN DOT.

BEFORE CONCLUDING, I WOULD LIKE TO POINT OUT THAT HAZARDOUS MATERIALS INCIDENTS AND FATALITIES REACHED AN 11 YEAR LOW IN 1984.

I HOPE THIS BRIEF BACKGROUND ON THE REGULATORY FRAMEWORK IS HELPFUL. I WILL BE GLAD TO ANSWER ANY QUESTIONS.